Nos. 14-556, -562, -571, -574

IN THE

Supreme Court of the United States

James Obergefell, et. al., *Petitioners,*

v.

Richard Hodges, et. al., *Respondents.*

Valeria Tanco, et. al., *Petitioners,*

v.

Bill Haslam, et. al., *Respondents.*

April DeBoer, et. al., *Petitioners,*

v.

Rick Snyder, et. al., *Respondents.*

Gregory Bourke, et. al., *Petitioners,*

v.

Steve Beshear, et. al., *Respondents.*

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

Brief of Jon Simmons as *Amicus Curiae* In Support of Respondents

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QUESTIONS PRESENTED

1) Whether the Fourteenth Amendment requires a state to license a marriage between two people of the same sex.

2) Whether the Fourteenth Amendment requires a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

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INTEREST OF JON SIMMONS[1]

As a commercial property owner and citizen, Mr. Simmons' property and personal interests are directly impacted by surrounding neighbors' actions guided by collective behavioral norms. These norms would be precipitously eroded by a judicial mandate redefining marriage. from time immemorial the central pillar for the traditional family, his community's primary forum for training and modeling of values, respect, and tolerance.

SUMMARY OF THE ARGUMENT

1. Across history and in all surviving or passing-

[1] The Parties have consented to this submission. The undersigned affirms that no party or counsel authored or made a monetary contribution in the preparation or submission of this brief, other than Mr. Simmons and counsel of record.

but-dominant cultures, male-female marriage is the overwhelming, acknowledged norm.

2. Societies have the capacity to change their interpretations of marriage; however, should the United States standard be changed from the male-female, binary norm exclusively supported by biology and genetics to "any loving, committed relationship"?

3. If homosexuality is, as its opponents say empirical evidence demonstrates, not normal or natural but rather predominantly a manifestation of developmental trauma or dysfunction, then institutionalizing it is a supreme disservice to those many who have successfully abandoned the lifestyle: a government-driven turnabout for long respected cultural remedies, a forced reversal

for preachers of traditional morality, and a fount of confusion for young people.

4. Marriage as a civil right based on desires alone is outside the established character of the civil rights realm that protects immutable characteristics of national origin, religious heritage, sex and race. The human capacity to be attracted to nearly anything and propensity for rationalization belies giving marriage's societal imprimatur to any "loving, committed relationship"; i.e. redefining marriage to encompass *mere desires* assigns legal import to same sex role-playing, only imitating what is attained by natural heterosexual pairing.

5. Heterosexual attraction and (potential) function within marriage is at its core existential. Same sex attraction has varying origins, mostly

traumatic or aberrant and commonly entrenched during adolescence or other vulnerable period.

6. Scriptural admonishments against the Christian faithful indulging same-sex attraction, portend danger in eternity. However, the small vocal minority of Christians vilifying homosexuals are an embarrassment to the larger Church of Christ, particularly when showcased by the media to the exclusion of those wishing to offer friendship, reconciliation and redemption.

7. The 99% likelihood of an adopted child becoming heterosexual despite being raised by same-sex parents, raises the question of how this can be considered effective modeling for the young.

8. Notwithstanding marriage accommodating equality of different races and economic parity of

women with men, marriageable love does not logically extend to all human affection.

9. Practically speaking, homosexuals' proposed normalization begs the question of why society doesn't separate restrooms as heterosexual and homosexual. The (presumed) visceral and institutional-cost/benefit rejection of this notion puts Petitioners' paradigm and its inevitable implications outside the margins of acceptability.

10. Once marriage is redefined away from the established norm, all non-traditional human groupings have legal precedent to bring their respective cases. Posterity willingly accountable to our legal regime cannot be assured on such a foundation: chaos is its only foreseeable end.

For the above reasons, it is appropriate that the Court strictly scrutinize Petitioners' cases which seek to assign interstate recognition and imprimatur to same-sex libido. States may differ in their treatment of marriage. However, the stability reasonably assured by rejection of Petitioners' arguments serves the greater good envisioned by our founding documents and the subordinate legal regime, into perpetuity.

ARGUMENT

Marriage is a civil construct used to define and clarify the attraction and union between the human male and female sex. Before society existed, men and women formed such unions. As history played out, variations of this union were tried and sometimes even sanctioned by

society, but ultimately "one man and one woman" (unrelated by blood) became the norm for all modern cultures. Even in Muslim countries, where the Koran permits up to 4 wives, the norm is nevertheless "one man and one woman".

Although some species may mate for life, animals don't 'get married', only people do. Only people recognize and understand the implications of marriage AND recognize and understand what kinds of unions are not marriages. Can societies change their interpretations of marriage? Of course they can. But here is the change we are being called to consider: will "one man and one woman" (unrelated by blood) continue to be the basis for defining marriage or will "any loving, committed relationship" become the standard?

Each side has gathered arguments to buttress their cause. Frankly I find few of these compelling. They usually boil down to "if we do this, that will happen" or "this has been done already and nothing bad happened". It's kind of pitiful when you think about it. But what else is to be expected when people try to bolster their secret fears or desires with more and more words? And, just like me, they avoid any data or scripture that compromises their position. In the final analysis we are all dishonest debaters.

It is the great desire of those who support gay rights to see homosexuality normalized. Legalizing gay marriage is a major objective in achieving that goal. But if homosexuality is not normal or natural, if homosexuality is in fact

dysfunctional, if most homosexuality is largely a product of trauma or deficit (and sin, if we would serve the conservative Christian view) then institutionalizing it is the supreme disservice to those who would leave it. They will be told to "quit living a lie" and embrace it.

And the ones who desire to leave homosexuality will be demonized, indeed are already being demonized. Too bad. Too bad for those who have already left homosexuality, for their voices will be stifled. Too bad for those struggling with same sex attraction, for the remedies of religion, psychology, and recovery groups will be removed from them. Too bad for the children who yet have to embrace a sexuality, for they will be told at school and through the media that any attraction

is good attraction, just don't hurt anybody by passing a STD. And too, too bad for those who do not wish to embrace gay marriage as the new civil right, for their calls to repentance will be labeled "hate speech" and they will be jailed for their dissent. This is happening already. So much for freedom of speech and respectful dissent.

Civil rights protect us from injustices based on national origin, religion, sex, or race. Nevertheless, redefining marriage as a civil right based on our sexual desires is ill advised. We have an infinite ability to be sexually attracted to almost anything as well as an equally infinite ability to rationalize that our sexual desires can be housed in a "loving, committed relationship". In trying to deflect this objection, opponents will

use the phrase "sexual orientation", but if there are only two genders, chromosomally either xx or xy, which are defined by biological differences, compatibility, and procreative potential (hence the institution of marriage arising to describe and protect such relationships between these two genders) then gender identification or sexual orientation really become yet another rationalization to allow us to stay in our houses of "loving, committed relationships"

It is wrong to lump all the varieties of homosexuality into one etiology or one paradigm. This is unfair to homosexuals and promotes misunderstanding and prejudice. Same sex attraction does not come from one cause or one gene, nor is it from the same constellation of

causes or genes acting together. For one it might be alienation from the opposite sex that began with a traumatic event(s). For another it could be over-identification with the opposite sex that formed by sharing gender-similar traits. For some it was from envy of the same sex because of a self-perceived gender inadequacy. For some it was from a relational disconnect (resentment, really) that materialized into an idealized same-sex solidarity supplemented by same-sex sexual activity (this is common for lesbians). For another it might have come from a response to romantic overtures from someone of the same sex which enmeshed them in an affirming/adulating relationship which compensated for a damaged self-image or sense of isolation. For yet others it makes no sense at all but just is.

It is ironic that the gay rights movement uses the rainbow as their emblem inasmuch as the causes of homosexuality are indeed as varied as the colors of the rainbow. But when sexualized at puberty and reinforced in adolescence, same sex attraction becomes entrenched and is fortified with every new homoerotic fantasy or personal affirmation by a sympathetic party. It justifies its worth with "love" and deflects disapproval either by open opposition or secret retention. This is indeed living the lie, and we should not propose gay marriage as a final endorsement of the lie.

For the most part I have used secular reasoning as to why gay marriage should not become a civil right. To me, it is regrettable that in a post-Christian world, appeals to Scripture are so easily

dismissed. Nonetheless if God did in fact create marriage—that is, for a man to be joined to a woman, and for a husband to be joined to a wife—then we tread dangerously if we would seek to overturn this, directly or indirectly. If we get this one wrong, human-ordained civil rights will not protect us for God's judgment in Heaven.

Still my heart is always saddened when I hear Christians vilifying homosexuals. The admonition to "hate the sin and love the sinner" seems lost on these. Fortunately they are only a small minority. They are nevertheless a large embarrassment to the Church of Christ, especially when the media delights to showcase them and ignores the much larger part of the Church that wishes to offer friendship and

reconciliation AND redemption. If anyone wishes to identify these Christians, they are the ones who believe homosexuality is a sin but are happy to befriend any homosexual who wishes to leave the gay lifestyle (as in, have them over for dinner or go out to a movie with) and are ever courteous to those who wish to remain homosexuals and ever come to their aid when in trouble. This constitutes "being in the world but not of it" Common courtesy to all is as much a part of the Christian calling as being unalterably opposed to sin. True love tells us to 'love our enemies' as well as to stay pure personally in an adulterous world.

This *amicus curiae* brief will probably have no effect on those committed to their respective

causes. They have too much invested. Frankly, both sides of the issue as portrayed in the media leave me cold. It seems that once we have made up our minds, any appeals to alternate resolutions are easily deflected. Being properly labeled as a homophobe or a pervert is much easier when no one wants to listen. But if for a few I can be a voice of calm that offers different view of things, especially in an increasingly turbulent and polarized sea, then I am satisfied.

Re: Adoption –So much energy and time are spent on qualifying prospective adoptive parents. Why? Presumably this is to reasonably insure that the adopted child will be raised in a stable home. But if there is a 99% likelihood of that child turning

out to be heterosexual[2], how does it make sense to send a child to a household where neither of the partners can model nor relate to that sexuality?

Re: The prohibition of interracial marriages being comparable to prohibiting gay marriages – In highlighting the "evolution" of marriage in culture, some point out that the legal changes striking down interracial marriage or giving wives equal footing within a marriage are

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[2] In *Lawrence v. Texas*, 539 U.S. 558 (2003), an *amici curiae* brief by a coalition of 31 homosexual advocacy groups referenced a widely accepted study of sexual practices, the National Health and Social Life Survey (NHSLS): "2.8% of the male, and 1.4% of the female, population identify themselves as gay, lesbian, or bisexual. See Laumann et al., The Social Organization of Sex: Sexual Practices in the United States (1994)." 539 U.S. 558 (2003), brief of *amici curiae* Human Rights Campaign et al., 16 January 2003, p. 16, FN 42. This average of the total population includes bisexuals, which lowers the percentage self-identifying as homosexual, the Petitioners here.

evidence of 'marriage' being a malleable institution which can and should change with the times. A reasonable observation. But in all these advances, never had the question revolved around changing the definition of marriage from "one man and one woman" to "anyone in a loving, committed relationship" Equality of race or sex is not the same as conflating all love as marriageable love.

Re: The separation of the sexes – Why do we have separate bathrooms for men and women? Now bring your answer over to address why we don't have separate bathrooms for homosexuals and heterosexuals. Wouldn't the reasons be the same? And again, why do we separate the sexes in the military, that is, why are they given separate

barracks and bathing facilities? And again, bring your answer over to address why we don't separate barracks and bathing facilities for heterosexuals and homosexuals to see if the reasons would not be the same. For me, this is the reason that homosexuality is incompatible with military service, not from any questions of competence or bravery or patriotism.

Re: Polygamy – Those against gay marriage correctly point out that if marriage is conferred on any union based on a loving, committed relationship, then little objection can be interposed against incestual relationships. This is rare and unlikely to be an issue any time soon. But polygamy is found in many places. Granted, it is currently hidden or in obscure cultures or

religions, but it is sure to be the next non-traditional marriage hot topic. And advocates will find support in the animal kingdom, history, and economic logic, just like they do now for gay marriage. As too will be their protests that love and commitment and caring are altogether possible within such unions, and that it is a callous and cruel decision to discriminate against these kind and just people. So who shall say them nay?

CONCLUSION

As to Question 1, the Fourteenth Amendment does not require a state to license a same-sex "loving, committed relationship" that by its nature is outside the jurisdiction's definition of marriage. As to Question 2, the Fourteenth

Amendment likewise does not require a state to recognize marriages it would not solemnize under state law. Accordingly, the decision of the Court of Appeals should be affirmed. However, individuals still have freedom to contract, gift, and bequeath without respect to marriage, which other states must honor according to the Full Faith and Credit clause of Article IV, Section 1 of the Constitution.

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